

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lianne May	Team: Squad #07	CCRB Case #: 202100181	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/02/2021 6:48 PM	Location of Incident: Front of 113-08 Sutphin Boulevard	18 Mo. SOL 7/2/2022	Precinct: 113		
Date/Time CV Reported Fri, 01/08/2021 8:27 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 01/08/2021 8:27 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Thomas Montario	09454	960962	113 PCT
2. POM Daniel Farina	08114	965716	113 PCT
3. SGT Christophe Harris	4205	954542	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Zachary Subramany	12053	966355	113 PCT
2. POM Daniel Healy	05579	966099	113 PCT
3. LT Robert Falcone	00000	948950	113 PCT
4. POM Bryant Spagnolo	21036	968148	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Christophe Harris	Force: Sergeant Christophe Harris struck § 87(2)(b) with a vehicle.	
B.SGT Christophe Harris	Force: Sergeant Christophe Harris used physical force against § 87(2)(b)	
C.POM Daniel Farina	Force: Police Officer Daniel Farina used physical force against § 87(2)(b)	
D.PO Thomas Montario	Force: Police Officer Thomas Montario used physical force against § 87(2)(b)	
E.PO Thomas Montario	Force: Police Officer Thomas Montario restricted § 87(2)(b)'s breathing.	
F.PO Thomas Montario	Force: Police Officer Thomas Montario used a chokehold against § 87(2)(b)	
G.SGT Christophe Harris	Discourtesy: Sergeant Christophe Harris spoke discourteously to an individual.	

Case Summary

On January 8, 2021, an § 87(2)(b) person filed a complaint on behalf of § 87(2)(b) through the CCRB on-line website § 87(2)(b)

§ 87(2)(g)

§ 87(2)(a) 160.50

On January 2, 2021, at 6:48PM, § 87(2)(b) and other individuals were riding ATV's and dirt bikes on the street in front of 113-08 Sutphin Boulevard in Queens during a memorial for their friend. § 87(2)(b) was revving his ATV bike's engine and wearing a black and red helmet. § 87(2)(b) alleged Sergeant Christopher Harris and Police Officer Daniel Farina of the 113 Precinct tapped § 87(2)(b) off the ATV with his car so that § 87(2)(b) fell off (**Allegation A: Force, § 87(2)(g)**). Sgt. Harris and PO Farina then took § 87(2)(b) to the ground and handcuffed him (**Allegation B: Force, § 87(2)(g)**; **Allegation C: Force, § 87(2)(g)**). PO Montario of the 113 Precinct allegedly knelt on § 87(2)(b)'s neck, resulting in alleged restricted breathing in a chokehold (**Allegations D-F: Force, § 87(2)(g)**). After arresting § 87(2)(b) Sgt. Harris told a bystander that § 87(2)(b) could have "fucking killed" someone (**Allegation G: Discourtesy, § 87(2)(g)**).

§ 87(2)(a) 160.50

The investigation received five NYPD body-worn camera (BWC) videos (BR8).

Findings and Recommendations

Allegation A-Force: Sergeant Christopher Harris struck § 87(2)(b) with a vehicle.

Allegation B- Force: Sergeant Christopher Harris used physical force against § 87(2)(b)

Allegation C- Force: Police Officer Daniel Farina used physical force against § 87(2)(b)

Allegation D- Force: Police Officer Thomas Montario used physical force against § 87(2)(b)

Allegation E- Force: Police Officer Thomas Montario restricted § 87(2)(b)'s breathing.

Allegation F- Force: Police Officer Thomas Montario used a chokehold against § 87(2)(b)

§ 87(2)(b) explained to the CCRB that on January 2, 2021, at 6:48PM at 113-08 Sutphin Boulevard in Queens, he was with friends at a candlelight memorial for one of their friends that died. § 87(2)(b) and his friends were riding ATV's and dirt bikes, revving their engines, and doing wheelies. § 87(2)(b) wore a black jacket, blue jeans, boots, and a black and red helmet. Sgt. Harris, PO Farina, and PO Montario arrived. Sgt. Harris allegedly hit § 87(2)(b) with the police vehicle so that § 87(2)(b) fell off his ATV. After § 87(2)(b) moved away from the ATV, Sgt. Harris, PO Farina, and PO Montario pinned and tackled § 87(2)(b) to the ground. PO Montario allegedly pressed his knee against § 87(2)(b)'s neck. § 87(2)(b) was face-down on the ground

and § 87(2)(b) did not say anything during this period, which he thought to last over one minute (BR9).

In Sgt. Harris' BWC (BR10) from 00:00-00:49, Sgt. Harris is in a vehicle and the front window is too dark to see any movement of actions in front of the car. From 00:53-01:13, § 87(2)(b) runs away from the officers, and they tell him to put his hands behind his back. Sgt. Harris and PO Farina kneel next to § 87(2)(b) and handcuff him. At 01:14, PO Montario brings his left knee up, so he is kneeling on his right knee. PO Montario's knee is above § 87(2)(b)'s head. It cannot be determined if PO Montario is putting pressure on his left knee. At 01:44, Sgt. Harris tells officers to roll § 87(2)(b) up. The officers walk him to the car until 02:10.

In PO Farina's BWC (BR11) from 00:27-01:18, PO Farina drives a car and gets out to run after Sgt. Harris chasing § 87(2)(b) is on the ground and PO Montario is kneeling to § 87(2)(b)'s left side next to his upper torso and head. PO Farina and Sgt. Harris handcuff § 87(2)(b). PO Montario's knee cannot be seen.

In Sgt. Harris' BWC at 04:15 (BR10), Sgt. Harris states that "he hit the car."

The entirety of PO Montario's BWC is obscured and cannot see where his knee is (BR12).

In the YouTube video (BR3) from 00:00-00:19, a person in a red and black helmet is lying face down on the ground. Someone yells, "why you got your knee on his face? Why you got your knee? Look at his knee! Look at his fucking knee!" PO Montario's knee is over the neck area but cannot see if it is in contact with § 87(2)(b)'s body. Others yell at the officer to take his knee off. From 00:23-00:55, two officers and a sergeant kneel around the person on the ground. It cannot be determined from the entirety of the video if the knee is on contacting the person on the ground.

The NYPD TRI Report # § 87(2)(b) notes that on January 2, 2021, at 7:35PM, PO Montario used a forcible takedown and hand strikes against § 87(2)(b) after § 87(2)(b) fled (BR13).

The NYPD TRI Report # § 87(2)(b) notes that on January 2, 2021, at 7:35PM, Sgt. Harris used a forcible takedown against § 87(2)(b) after § 87(2)(b) fled. Sgt. Harris sustained abrasions and lacerations and complaint of substantial pain after trying to apprehend § 87(2)(b) (BR14).

ADA Liander and Assistant District Attorney Daniel O'Leary provided documents and transcriptions from their interviews with Sergeant Daniel Shook of the Police Academy, Sgt. Harris, PO Montario, PO Farina, and § 87(2)(b) (BR15).

On January 29, 2021, Detective Thomas Kaup of the Queens County District Attorney's Office interviewed Sgt. Shook about NYPD Training and Tactics. Sgt. Shook explained that the NYPD trains officers to use the "catcher's position" (both toes and feet on the ground with knees up and at least one foot on the ground) when trying to control someone facedown and "INCIDENTAL" contact with a torso is permissible (BR15).

On February 19, 2021, Det. Kaup interviewed Sgt. Harris. Sgt. Harris testified that § 87(2)(b)'s ATV hit the police vehicle because he felt a jolt to the police car. However, Sgt. Harris then recanted his statement that the ATV hit the police vehicle because Sgt. Harris did not see any damage to the car and the jolt was from his driver braking quickly. Sgt. Harris explained that Sgt. Harris, PO Montario, and PO Farina were trying to put § 87(2)(b)'s hands behind his back while

he resisted. Sgt. Harris denied that PO Montario put his knee on § 87(2)(b)'s head or neck (BR15).

On January 15, 2021, Det. Kaup interviewed PO Montario who explained that he tried to grab § 87(2)(b) when § 87(2)(b) fled. PO Montario and Sgt. Harris tackled § 87(2)(b) so that § 87(2)(b) was on the ground. PO Montario explained that he was in the NYPD's "catcher's position" so that he was kneeling perpendicular to § 87(2)(b) with his right knee flush on the ground and his left knee was in the air with no weight on his left knee and his left knee never came in contact with § 87(2)(b)'s body (BR15).

On January 22, 2021, ADA O'Leary interviewed PO Farina. PO Farina explained that Sgt. Harris conducted a forcible takedown of § 87(2)(b) and PO Montario was near § 87(2)(b)'s upper body. PO Farina attempted to handcuff § 87(2)(b) while PO Montario was in a "catcher's position" (BR15).

On § 87(2)(b), § 87(2)(b) told the Queens District Attorney that during the 90 seconds he was on the ground, he felt constant pressure on his neck from an officer's knee. He could not testify if he could or could not breathe (BR15).

§ 87(2)(g)

In his CCRB interview, Sgt. Harris explained that he was responding to a radio run for officers requesting assistance with groups of people riding dirt bikes. Upon arriving, § 87(2)(b) was driving recklessly on a dirt bike and then hit Sgt. Harris' vehicle with the bike. § 87(2)(b) fled when Sgt. Harris exited his vehicle. Sgt. Harris then tackled § 87(2)(b) by grabbing his legs so that both § 87(2)(b) and Sgt. Harris fell to the ground. Sgt. Harris, PO Farina, and PO Montario then handcuffed § 87(2)(b). PO Montario never made contact with § 87(2)(b)'s body because he was in the "catcher's position" (BR16).

In his CCRB interview, PO Montario said that he assisted Sgt. Harris in apprehending § 87(2)(b). PO Montario and Sgt. Harris were on the ground with § 87(2)(b) when § 87(2)(b) began to raise his body. PO Montario then rotated his own body to § 87(2)(b)'s left side and put his weight on his right knee and leaned on his right heel. He was in a "catcher's position" but in his CCRB interview, explained that he never had any NYPD training regarding this position. PO Montario did not make contact with § 87(2)(b)'s neck or head with any part of PO Montario's body (BR17).

PO Farina resigned with permission from the NYPD on January 22, 2021 (BR18). He therefore could not be interviewed at the CCRB.

Patrol Guide 221-01 entitled *Force Guidelines* states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. In addition, this describes a chokehold as "any pressure to the throat or windpipe, which may prevent or hinder

breathing or reduce intake of air” and further states, “Members of the service **SHALL NOT** use a chokehold” (BR19).

NYC Administrative Code 10-181 entitled “Unlawful Methods of Restraint” criminalizes the use of police chokeholds. It states that, “no person shall restrain an individual in a manner that restricts the flow of air or blood by compressing the windpipe or the carotid arteries on each side of the neck, or sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm, in the course of effecting or attempting to effect an arrest” (BR20).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that PO Montario put his knee onto § 87(2)(b)'s neck for over a minute.

§ 87(2)(g)

Allegation G-Discourtesy: Sergeant Christopher Harris spoke discourteously to an individual.

In Sgt. Harris’ BWC (BR10) from 3:40-4:30, a crowd calmly tells Sgt. Harris that § 87(2)(b) was allowed to be there. Sgt. Harris tells them that § 87(2)(b) was not allowed to be doing “donuts” in the street and § 87(2)(b) ran away from him. A bystander from the crowd walks with Sgt. Harris down the street. Sgt. tells him his name is “Harris” while fist bumping the bystander and asking, “what’s going on.” The bystander tells Sgt. Harris that Sgt. Harris had a smile on his face. Sgt. Harris tries to explain how the situation arose and he was not smiling. The bystander states, “you was enjoying it.” Sgt. Harris states, “he hit the car. Someone could have got fucking killed.” The bystander accuses Sgt. Harris of initiating the situation. Sgt. Harris tells the bystander that he was hurt too.

Sgt. Harris explained in his CCRB interview that he used profanity because he was frustrated but acknowledged he could have used different words (BR16).

Patrol Guide 200-02 regarding the NYPD’s mission states, “the Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect, while efficiently rendering police services and enforcing the laws impartially” (BR21).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR22).
- Police Officer Thomas Montario has been a member of service for 6 years and has been a subject in one CCRB complaint and two allegations, none of which were substantiated.

§ 87(2)(g)

- Sergeant Christopher Harris has been a member-of-service for 8 years and this is the first CCRB complaint to which he has been a subject (BR24).
- Police Officer Daniel Farina had been a subject in one CCRB complaint and one allegation, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- As of April 2, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR26).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 7

Investigator:	<u>Lianne May</u>	<u>Investigator Lianne May</u>	<u>May 4, 2022</u>
	Signature	Print Title & Name	Date

Squad Leader: _____

Signature	Manager Vanessa Rosen	May 5, 2022
	Print Title & Name	Date

Reviewer: _____

Signature	Print Title & Name	Date
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